

The High Court Of Madhya Pradesh**CR-492-2018***(ONKAR PRASAD Vs SMT. PRABHABAI)***Jabalpur, Dated : 01-08-2018**

Shri Rakesh Jain, Advocate for the petitioners.

Heard on admission.

Learned counsel for the petitioners submits that the instant revision has been filed against the order dated 29.06.2018 (Annexure-P/1) whereby an application made by the petitioners under Order 7 Rule 11 (d) CPC has been rejected by the Court below. He submits that in view of the settled principle of law that counter claim cannot be filed solely against the co-defendants, therefore, the same deserved to be rejected.

As per the facts of the case, the petitioners/plaintiffs have filed a suit for declaration and permanent injunction, in which, the respondents have been made defendants except respondent No.6 who was plaintiff in a suit filed by the present petitioners. Thereafter, a counter claim has been filed by the defendants but respondent No.6, who was earlier plaintiff No.7 moved an application for his transposition as a defendant in the counter claim and that application was allowed by the Court below and accordingly plaintiff No.7 namely Shri Abhishek Pateriya transposed as defendant in the counter claim.

Learned counsel for the petitioners submits that after transposition of the plaintiff as defendant in counter claim, an application has been made under Order 7 Rule 11(d) of CPC for rejection of the counter claim saying that the same cannot be filed against the co-defendant.

The Court below considered and rejected the application on the ground that the contention of the plaintiffs that the counter claim cannot be entertained against the co-defendant and accordingly the same ought to have been rejected by the Court, but the Court has found that it was not solely against all the co-defendants however only one plaintiff lateron transposed as defendant and no relief has been claimed against him, but, basically in the counter claim, the defendants have claimed relief against the present petitioners/plaintiffs. It is also observed by the Court below that the request of plaintiff No.7 to be transposed as defendant in counter claim has been accepted by the Court restraining him to file any separate written-statement also from producing any evidence. In such circumstances, the stand of the petitioners/plaintiffs does not appear to be proper. It is clear from the available circumstances that the counter

claim was not solely against co-defendants but is mainly against the plaintiffs and only one plaintiff has been transposed as co-defendant does not make the counter claim invalid and same does not fall within the criteria laid down under Order 7 Rule 11 (d) of CPC. On a perusal of the judgment of the Supreme Court relied upon by learned counsel for the petitioners in the case of *Rohit Singh and Others v. State of Bihar and Others (2006) 12 SCC 734*, it is clear that the ratio laid down by the Apex Court runs against the petitioners which very categorically deals that the counter claim is not maintainable if directed solely against co-defendants. As already set-forth that the counter claim was solely not against the co-defendants, but it was against the plaintiffs and only one plaintiff who stood transposed as co-defendant and against whom no relief was claimed in the counter claim. Thus, the order passed by the Court below does not suffer from any material irregularity and thus the Court below has not committed any error while passing the order rejecting the application filed by the petitioners.

Accordingly, the petition since suffers from merits, is liable to be and is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE

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